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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

CAPITAL CITY PRESS, INC.,
Petitioner,

v.

GILBERT BURATT,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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MAY IT PLEASE THE COURT:

Respondent, Gilbert Buratt, adopts by reference the following from the petition for a writ of certiorari to the Supreme Court of Louisiana filed by Capital

City Press, Inc.:

A. Questions presented (1);

B. Opinions below (1);

C. Jurisdiction (1);

D. Constitutional Provisions Involved (2);

E. Statement of the Case (2)

LAW AND ARGUMENT

I.

PETITIONER CLAIMS THAT A REPORT OF PUBLIC RECORD INFORMATION THAT ADEQUATELY CAPTURES ALL SIDES OF ANY DISPUTE CONCERNING HISTORICAL FACT IS "ACCURATE" AND CONSTITUTIONALLY SECURE FROM CLAIMS OF DEFAMATION LIABILITY BY A PUBLIC OFFICIAL PLAINTIFF.

Petitioner claims that the information reported in the Sunday Advocate on July 8, 1979, was "the only evidence available to illuminate an investigation into charges that public officials had comported themselves with less than appropriate rectitude in their official capacities." Petitioner

further states that "to make generally known, the raw reports of such investigation is surely a centrally important function" of the press.

The trial court, and higher courts of Louisiana recognized that the information reported in the article was not the only evidence within the knowledge of the defendant which would have clarified the factual basis of the charges in the investigation of Gilbert Buratt. Respondent must agree that the intent of that news article was to illuminate an investigation into charges that public officials had comported themselves with less than appropriate rectitude in their official capacities. However, the courts below found that the petitioner failed to faithfully, justly, and completely report other evidence which would have defeated the obvious intent of the article. Unlike Time, Incorporated v. Pape, 401 U.S. 279 (1971) and Time, Inc. v. Firestone, 424 U.S. 448 (1976), the pub-

lisher here was not reporting the conclusions of a governmental entity. Rather, it was sketching its own skewed picture of a public official's actions and the conclusions it wanted its readers to reach. The publisher was in total control of the "raw data" sought to be disseminated to the public. By petitioner's control of this data, it cannot abrogate its responsibility to the issue of "truth" in publication. This responsibility includes the necessity to print all facts which fairly and completely illuminate those charges, even though they may be contrary to a preconceived thesis.

Respondent fully agrees with the petitioner's statement that "public knowledge of official reports of investigations of public officials - and, most especially, elected officials - are a vital ingredient to the informed function of the democratic process". This democratic process does not apply only to the protection of free

speech, but applies also to the protection of the privacy and reputation of public officials, and most importantly, to the right of the public to know all of the facts and the complete truth about their public officials. As a result of its ubiquitous control of public access to information, the press effectively deprives the voting public of its right to free and informed elections by failing to accurately and fairly report information about public officials. That "vital ingredient" spoken of by the petitioner is important not only to the public official but also to the voting public.

The petitioner alleges that it was fulfilling a public interest in being fully informed, when in fact it only printed that evidence which incriminated the respondent and ignored exculpatory statements which were within its knowledge. Even after it was brought to petitioner's attention that

its article was false and that Gilbert Buratt did not own, or have any interest in, a subdivision, the Morning Advocate failed to publish a correction. Petitioner in its news article stated that Paul Barber reported to an investigator that Mr. Buratt was a partner in a subdivision development and that he and an unknown partner had asked Mr. Barber to overlay a road in a subdivision owned by Buratt. (Barber was a contractor who was doing work for the Parish Police Jury, and Buratt was a police juror at that time.) Further, the article stated that Mr. Buratt denied having any interest in the development.

It was clearly shown at trial that the public documents reviewed by the authors of this article contained a second Gilbert Buratt interview, and an interview with Earl Stafford, the "unknown partner". These interviews contained information

inapposite to the premise upon which the article was based, namely that Gilbert Buratt is a police juror who was attempting to extort or receive a "gift" from a parish contractor.

The authors admitted at trial that they not only had serious doubts as to the truth of the publication, but were aware of and in possession of facts which demonstrated that the publications were false. Milfred Fryer, one of the authors, on cross examination, stated that he was given access to the complete file of the Attorney General's Office and given as long as he wanted to examine it. He also stated that at the time of the article, he was aware that Earl Stafford owned the subdivision at issue, and knew that Earl Stafford was the "unknown partner" referred to in this article, and yet did not include that information in the article. [1]

1. Mr. Fryer testified:
Q. At the time you printed these
(Footnote continued)

The interview with Earl Stafford, and the second interview with Gilbert Buratt, both showed that the owner of the subdivision was Earl Stafford and explained why Gilbert Buratt had spoken to Paul Barber. As the trial court found, this information completely refuted ownership of the subdivision by Buratt, but was not summarized or referred to by the reporters, even though it was within their knowledge. Buratt v. Capital City Press, Inc., 459 So.2d., at 1270 (Petitioners App.

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articles and after you had read the interviews, you knew who the unknown partner was, didn't you?

A. Well yes sir.

Q. Yet you didn't print that it was an unknown partner, and that you didn't print the circumstances completely surrounding this incident, is that correct?

A. That is correct.

Q. Right, but Mr. Buratt testified at one of his interviews that he had taken Earl Stafford to introduce him to Paul Barber concerning road construction but Paul Barber and them were working. Isn't that correct?

A. Yes sir.

(Footnote continued)

5a.) Petitioner claims an absence of malice because the portrayal of Mr. Buratt's ownership can have no more than two sides: either he owns it or he doesn't. The Morning Advocate incredibly claims to have fairly portrayed the Buratt "side" by simply printing his denial. However, the truth is that Buratt never developed or owned a subdivision, and the existence of the second side of the issue is merely an artifact of the newspaper's reckless disregard of the truth.

The courts below unanimously concluded that the withholding and refusal to

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Q. And you had read that?
A. Yes Sir.
Q. So in fact you didn't print all of the pertinent facts of these interviews. Is that correct?
A. It depends on what you consider pertinent facts.
Q. Well you didn't print other portions of the interview which refer to the circumstances surrounding the statement made by Mr. Barber.
A. Well, we did as I recall, we generally print a general denial from Mr. Buratt.

include the second statement by Gilbert Buratt and the statement of Earl Stafford are the basis of "malice". To conclude otherwise would allow a publisher to manipulate the truth by its selective deletion of facts within it knowledge to support the premise of its article or headline, regardless of truth.

II.

PETITIONER ALLEGES THAT THE LOUISIANA APPELLATE COURT DECLINED TO CONDUCT AN INDEPENDENT EVALUATION OF THE EVIDENCE RELIED ON BY THE TRIAL COURT TO ESTABLISH ACTUAL MALICE, IN DISREGARD OF LAW ESTABLISHED BY THIS COURT.

The opinion of the Court of Appeals in the First Circuit, Louisiana, stated:

> "We conclude after examination of the evidence that the trial judge's findings of fact to which plaintiff objects in his first, second and fourth assignments of error are not manifestly erroneous and should not be disturbed on appeal." Canter v. Koehring Co., 283 So.2d 716 (La. 1973)

Immediately prior to this statement, the Court of Appeal noted:

> "The trial courts well reasoned opinion, utilizing the standards for a defamation action set out by this court in Buratt, supra, is attached to this opinion with our approval."

The Appeals Court, by attaching the opinion of the trial court, obviously reviewed each and every finding of the trial court and by attaching its opinion adopted

that reasoning as it's own. Additionally the court had reviewed the issue of malice on a prior occasion in Buratt v. Capital City Press, Inc., 399 So.2d 687 (1981).

More importantly, however, the Court of Appeals addressed the issue of actual malice in its opinion during its discussion of assignment of error number three.

> This is what the trial judge meant by summarizing all available material. The trial judge did not require investigation, or verification or reproduction. He simply held that when other information was there and was in fact known by the reporters, they were not justified in omitting that information from the summary simply because it refuted the point they were trying to make. A reckless disregard for the truth or falsity of the material published follows from such action. New York Times v. Sullivan, 84 S.Ct. 710 (1964) See Buratt, supra.

Petitioner also attempts to attack the trial court's determination that the authors of the article had information other than that which they reported on July 8, 1979. The court's holding was based partially upon the elusive testimony

by Mr. Pritchford. Mr. Pritchford testified on direct that he did not see any other statement concerning a denial or clarification of Mr. Buratt's interest in the alleged subdivision. However, when Mr. Pritchford was presented with his notes, which showed that he had seen other statements and made notations, he was forced to admit that he had seen this other information.

In addition, the testimony of Mr. Milfred Fryer shows that he was aware of the identity of the "unknown partner" referred to by Mr. Barber. He testified that although he knew the identity of the unknown partner at the time he wrote these articles, he did not reveal his identity and he did not report completely the circumstances surrounding the subdivision incident. Earl Stafford's interview was also in the record of the Attorney General's Office which was reviewed by the defendant.

Yet Earl Stafford's interview was not mentioned in subject article.

The trial court determination involved the credibility of defendant's witnesses. The First Circuit Court of Appeal, after reviewing the record, held that if reporters know or should know certain facts derived from the public record, they cannot omit these facts from their report simply because they are contrary to some preconceived theory or premise. The Court of Appeal, after reviewing the evidence, found that the second statement by Gilbert Buratt and the statement by Earl Stafford were known or should have been known by the defendants, who did not summarize or refer to them.

Petitioner's contention that the Louisiana Court of Appeals failed to review the factual findings of the trial court with proper rigor is unfounded. The Court of Appeal's opinion took into consideration

Mr. Fryer's admission that he was aware of the fact that Earl Stafford was the unknown unnamed partner in Paul Barber's statement. Further, it took into consideration that Roy Pritchford was aware that Earl Stafford was the unknown partner and further that Gilbert Buratt had testified that Earl Stafford was an unknown partner. None of this was reported in the article.

Importantly, Mr. Lawrence Albarado's testimony as to whether he did or did not see the article was as follows:

> "I remember either in discussion with...the other two reporters about reading it somewhere that the thought he...had no interest, you know, that this thought conveys here.
>
> * * *
>
> I can't say with [illegible]cty that I saw this particular statement. I may have...I read several of the different statements that this, you know, all of the files were done by the interviewee."

It is clear that the Court of Appeal did not accept defendant's testimony as credible. The Court of Appeals as well as the trial court concluded that the three reporters knew Earl Stafford was the unnamed partner, were aware of Earl Stafford's statement, and refused to print it. Those courts also found that the failure to print it constituted "actual malice".

CONCLUSION

It is for the reasons cited above that the trial court awarded Gilbert Buratt the sum of THREE THOUSAND AND NO/100 ($3,000.00) DOLLARS as damages in this suit. It is submitted that this Judgment should not be disturbed and that the petition for writ of certiorari be denied.

Respectfully submitted,

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CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing Brief in Response to Petition for a Writ of Certiorari to the Supreme Court of Louisiana has this day been mailed, postage prepaid, to counsel of record.

Donaldsonville, Louisiana, this 1st day of July, 1985.

VICTOR L. MARCELLO